

# POLICE CHOICE: FEASIBLE POLICY OPTIONS FOR A SAFER AND FREER SOCIETY

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## 1. Introduction

THE SYSTEM OF POLICING in the United States is largely failing US citizens by providing low-quality services. Police response times<sup>1</sup> are slow, and, even more importantly, government police officers are frequently shown to be abusing their power (Lewis 1999). Perhaps because of advancements in social media technologies, citizens are noticing many more cases of police officers' abuse of power. Indeed, a simple Google Trends search reveals that public interest in the term "police brutality" reached all-time highs in each year from 2014 to 2016.<sup>2</sup> Furthermore, over 1,100 citizens were killed by police officers each year from 2014 to 2017.<sup>3</sup>

A recent viral video shows an intoxicated man from Arizona crying and begging for his life on his hands and knees before a police officer, Philip

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<sup>1</sup> "In New Orleans, Call 911 and Wait for an Hour." *The Economist*. Retrieved from: <https://www.economist.com/blogs/democracyinamerica/2015/12/police-response-times>.

<sup>2</sup> "Police Brutality" (2018). Google Trends. Retrieved from: <https://trends.google.com/trends/explore?date=all&geo=US&q=police%20brutality>.

<sup>3</sup> "Killed by Police 2017." Retrieved from: <http://www.killedbypolice.net/kbp2017>.

Brailsford, shot and killed him.<sup>4</sup> While the victim, Daniel Shaver, was on the ground, the police officer continuously shouted at him and yelled things like, “I’m not here to be tactical and diplomatic with you. You listen. You obey.” How did all of this start? The police officers came because they thought Daniel Shaver had a rifle; however, no rifle was ever found in the room. Philip Brailsford was acquitted of second-degree murder charges.

Surprisingly, according to data collected by Mapping Police Violence, 99 percent of all of the cases in 2015 did not result in the conviction of a police officer.<sup>5</sup> Perhaps even more disturbing is the fact that African Americans are over three times as likely to be killed by police as whites (Ross 2015). Citizens with darker skin color also report slower police response times, even after controlling for factors such as socioeconomic status and other demographic characteristics (Cohen, Zechmeister, and Seligson 2015), and African Americans report lower levels of trust and satisfaction with police departments (Brown and Coulter 1983; Van Ryzin, Muzzio, and Immerwahr 2004), perhaps because of racial discrimination in the use of police force (Fryer 2016).

Of course, the quality of police departments varies by location. For example, citizens are seven times more likely to be killed by police officers in Oklahoma than in Georgia. Police-quality levels are often positively correlated with per capita income within a given geographic location. Indeed, Cohen, Zechmeister, and Seligson (2015) find that individuals with more wealth report that police respond more quickly to their requests. This is likely because police departments are primarily funded through property taxes, and wealthy people can afford to purchase expensive houses with access to the best policing services.

Currently, one of the strongest pressures for police departments to improve is generated through residential selection, also known as Tiebout choice (Tiebout 1956). When citizens choose where they are going to live, they consider the bundle of publicly provided services they receive, including K-12 schooling, parks, fire departments, and policing. If a police department is using a substantial amount of tax dollars and is not keeping its citizens safe, individuals can move to a geographic location that has a more effective police force. When individuals leave an area, house prices decrease, property-tax

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<sup>4</sup> “Graphic Video Shows Daniel Shaver Sobbing and Begging Officer for His Life before 2016 Shooting.” *Washington Post*. Retrieved from: [https://www.washingtonpost.com/news/post-nation/wp/2017/12/08/graphic-video-shows-daniel-shaver-sobbing-and-begging-officer-for-his-life-before-2016-shooting/?utm\\_term=.d622f2b20f34](https://www.washingtonpost.com/news/post-nation/wp/2017/12/08/graphic-video-shows-daniel-shaver-sobbing-and-begging-officer-for-his-life-before-2016-shooting/?utm_term=.d622f2b20f34).

<sup>5</sup> “Mapping Police Violence.” Retrieved from: <https://mappingpoliceviolence.org>.

revenue decreases, and police departments lose funding. Consequently, police departments theoretically have a financial incentive to improve quality levels. In addition, public police-force incentives may largely come from interbureau competition for public dollars (Baicker and Jacobson 2007; Benson, Rasmussen, and Sollars 1995).

However, since police departments are public entities, they do not face the same shutdown pressures that private organizations encounter. In addition, since the residential-selection decision includes consideration of a large bundle of public services, and transaction costs associated with switching residences are very high, Tiebout choice is a weak form of police accountability. The lack of competitive pressures to perform well might have something to do with the low quality levels of government policing in the United States (Forst 2000). In the schooling industry, for example, residential assignment is also a commonly cited reason for lackluster educational results in the United States (Chubb and Moe 1988; Friedman 1997).

The concept of school choice, made popular in the United States by Milton Friedman (1955), has arguably led to substantial quality improvements (DeAngelis 2017; Shakeel, Anderson, and Wolf 2016; Wolf 2007; Wolf et al. 2013) and cost reductions (Lueken 2016; Spalding 2014) in the K-12 education system. In theory, the ability to opt out of a residentially assigned government school provides additional competitive pressures for all schools, public or private, to perform well. Similarly, the ability to opt out of a residentially assigned government police force could provide additional incentives for all rights-protection firms to raise quality levels.

Today, police departments lack the incentives necessary to perform well. If a police department does an exceptional job at ensuring public safety, it is not financially rewarded for doing so. Property-tax revenues remain the same in the short run until enough people decide to move to the department's geographic area. However, at the same time, it is possible that the quality levels of other public services, such as parks and schools, go down. The net result may be that great police departments are financially punished in the short run for a job well done. In addition, police officers are often compensated based on seniority and credentials rather than their ability to handle potentially violent situations calmly (Bartel and Lewin 1981; Danielson 1967; Devine 1969; Hall and Vanderporten 1977). It should not surprise us that police quality is not where we would like it to be; police officers are simply responding to the incentives that exist within the current system of rights protection. Perhaps it is rational that police officers are using violence rather than difficult psychological techniques: if officers know they are not going to be rewarded for skillful de-escalation, and that they will not

be punished for violent acts, they may be more likely to use violence since it minimizes their own risk of death.

In a system of private police choice, consumer choices would reward great police officers for their services. The police-choice system would also hold low-quality police departments accountable for their actions. Imagine that the video of the horrific death of Daniel Shaver was released in a system of police choice. The public relations disaster would lead to financial losses to the policing firm, and the officer would probably be out of a job. Public outrage would entice consumers of rights-protection services to leave the policing company for a more professional and safer firm. In addition, customers from different policing firms could compare police quality levels side-by-side by discussing with their network of acquaintances or by simply looking up quality statistics and customer-satisfaction ratings online.

In the following sections, I discuss examples of private policing, feasible public and private police-choice policy options, and the common (but generally invalid) criticisms of police choice. I conclude with recommendations. While one report has applied the concept of school vouchers to prisons (Volokh 2012), this is the first time (that I know of) that police choice has been discussed in the literature. Other scholars have theorized that private subscription-based patrol and restitution services could emerge as a free market alternative to government police when governments become fiscally unstable (Guillory and Tinsley 2009). Barnett (2014) similarly suggested that rights-maintenance organizations could provide legal services and patrol services. In addition, David Friedman (1989) and Murray Rothbard (1978) argued that law and order could be provided privately. However, Guillory and Tinsley (2009), Barnett (2014), Friedman (1989), and Rothbard (1978) did not discuss how present society could move toward a system of privately produced law enforcement. The current study provides a few politically feasible avenues.

## **2. Examples of Private Policing**

This section outlines just a few of the historical examples of private rights protection. Although it is not a comprehensive account of all examples, since that would be largely redundant, these examples illustrate that rights protection can be privately provided and more desirable than the government-provided alternative.

### *2.1 England*

The government did not create an official organization to provide law enforcement services in England until the Metropolitan Police Act of 1829, so policing was largely a privately produced service in the seventeenth and eighteenth centuries (Emsley 2014; Harris 2004; Old Bailey Proceedings 2015). Indeed, tracking down rights violators was not even an official duty of the government before 1829 (Beattie 2001).

Because the government did not adequately provide the essential service of rights protection, a private market emerged (Hitchcock and Shoemaker 2006). The private police in the seventeenth and eighteenth centuries, known as thief takers, would accept payments from the victims, and sometimes rewards from the government, for returning stolen property (Beattie 2001; Gilbert and Schichor 2000; Howson 1985; Wales 2000). To further incentivize the private service, starting in 1692 the government introduced statutory financial rewards for convictions (Beattie 2001; Wales 2000). In addition, citizens such as Henry Fielding paid weekly wages to groups of thief takers to catch criminals, investigate violations, and return stolen goods (Beattie 2012; Beattie 2017; McLynn 1989). Some evidence suggests that private-police groups such as the Bow Street Runners were effective. London's Old Bailey Proceedings (2015) indicate that the Bow Street Runners improved detection rates and decreased crime. News outlets such as the BBC<sup>6</sup> have contended that "the Bow Street Runners proved to be very effective" in that crime rates fell and conviction rates increased. In addition, the BBC claimed that "the success of the Bow Street Runners led to other initiatives" increasing private protection such as the Middlesex Justices Act of 1792 and the origin of the River Thames Police in 1798.

Of course, seventeenth-century England is not the only historical example of privately produced rights-protection services. There were also several forms of private rights protection in ancient Rome (Kelly 1988), and the United States in the eighteenth and nineteenth centuries (Dempsey 2010).

### *2.2 Detroit, Michigan*

Detroit, Michigan, may be the best current-day example of a hard case for private rights protection in the United States. The most recent data from the US Census Bureau (2017a; 2017b) indicate that 39 percent of the Detroit population lives in poverty, with a per capita income level of \$15,562.

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<sup>6</sup> "The Establishment and Influence of the Bow Street Runners." BBC. Retrieved from: <https://www.bbc.com/education/guides/z9y9fcw/revision/3>.

Detroit's poverty level is almost three times the national average, while its per capita income level is 68 percent below the national average. Perhaps more importantly, according to the most recent statistics provided by the Federal Bureau of Investigation (2016), Detroit is the most violent city in the United States, with 13,705 violent crimes including 202 murders, 579 rapes, 9,882 aggravated assaults, and 2,941 robberies in 2016. Detroit's violent crime rate was 5.3 times the national average in 2016.

The low standard of living in Detroit could partially be because the city's safety issues have pushed companies to go elsewhere. After all, why would anyone want to invest in property in a place that does not successfully protect property? Detroit police have even issued public statements saying that since the city is so dangerous, visitors must "enter at [their] own risk."<sup>7</sup> Perhaps because of the inability of the government police force to keep Detroit safe, private security agencies, such as Threat Management Center, have emerged. The founder of Threat Management Center, Dale Brown, has frequently pointed out that his employees are highly trained to use negotiation and de-escalation tactics based on knowledge of human psychology, rather than force, to de-escalate otherwise violent situations. He has also discussed how he provides security services for free, even with his company's currently strong monopoly power, to those that are unable afford the services, as well as senior citizens and victims of domestic violence and stalking. In addition, none of the employees have been killed, and none of his customers have been injured or killed since the company's inception over twenty years ago. Dale Brown also claims his services have reduced violent crime by 90 percent in some neighborhoods.<sup>8</sup>

Michigan senator Arlan Meekhof introduced Senate Bill 594, known as the Special Police Agency Act, on September 27, 2017. This bill would "permit legally organized entities to enter into contracts with special police agencies" (Michigan Legislature 2017). However, while this bill would allow for licensed private police forces, it would not provide a funding mechanism such as a voucher because it would not allow citizens to opt out of government police protection and take their share of the expenditures with them. The lack of a funding mechanism could create two significant problems for successful systems of police choice: (1) insufficient demand for a sustainable market, and (2) a lack of financial incentives for government-

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<sup>7</sup> CBS Detroit (2012). "Enter at Your Own Risk: Police Union Says War-Like Detroit Is Unsafe for Visitors." Retrieved from: <http://detroit.cbslocal.com/2012/10/06/enter-at-your-own-risk-police-union-says-war-like-detroit-is-unsafe-for-visitors>.

<sup>8</sup> Threat Management Center. Retrieved from: [www.threatmanagementcenter.com](http://www.threatmanagementcenter.com).

run police departments to improve. In addition, current government regulation could mean high barriers to market entry for private police firms even if public funding were to be made available (Meehan and Benson 2015; Stenning and Cornish 1975).

### *2.3 San Francisco, California*

The California Gold Rush of 1849 enticed thousands of people to move to the West Coast. During that time, groups of criminals such as the Regulators and the Sydney Ducks attacked local businesses and households, but a government police force did not exist in 1849. Because the San Francisco inhabitants could not rely on a government police force to protect them, they had to privately provide the service. The private police force came into existence and protected San Franciscan households and neighborhoods without the need for coercive revenues. Private police firms such as the San Francisco Patrol Special Police still exist and provide valuable services to citizens (Stringham 2015). Scholars have noted that San Francisco's private police are more cost effective than off-duty police officers (Bechler 2011; Office of International Criminal Justice 1995).

### *2.4 Other Examples*

These are not the only examples of private policing. Major railroads in the United States and Canada still have large private police forces (Benson 1998; Benson 2014). Private law enforcement officers, or security officers, in South Carolina are authorized by the state to make arrests, respond to service calls, and give traffic tickets.<sup>9</sup> Of course, the situation in South Carolina is unique in the United States, as other states tightly constrain the scope of activities private officers can perform (Meehan and Benson 2015). Because of heavy regulation in the current system, the police-choice programs I propose in this report would likely need to pass alongside deregulation legislation to be effective.

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<sup>9</sup> South Carolina Code of Laws, Title 40, Chapter 18. Retrieved from: <https://www.scstatehouse.gov/code/t40c018.php>.

### 3. Policy Options

#### 3.1 *Vouchers*

A well-known type of voucher system already exists in the United States today in sixteen states and in the nation's capital. If a family is not happy with the quality of its child's educational arrangements, it can opt out of its residentially assigned government school and take a fraction of its allocated public funding to the private school of its choice (EdChoice 2017a). Since private schools must attract their customers from traditional public schools, and public schools receive funding based on enrollment counts, all schools, public and private, have a strong incentive to educate children effectively (Chubb and Moe 1988; DeAngelis and Holmes Erickson 2018; Friedman and Friedman 1990; Hoxby 2003; Merrifield 2001).

While Milton Friedman (1955; 1962) is often thought of as the first person to propose a publicly funded school-choice voucher, the concept existed long before his lifetime. Thomas Paine (1791) contended that education ought to be privately provided and that government should "allow for each of these children ten schillings a year for the expense of schooling." Similarly, John Stuart Mill (1859) argued that while government might have an incentive to compel each child to receive an education, it "might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them."

Private-school voucher programs are usually tied directly to state education-funding formulas that are largely based on student-enrollment counts. For this reason, public schools already experience weak competitive pressures through residential, or Tiebout, choice (Tiebout 1956). In contrast, police departments in the United States are usually funded through a combination of local property taxes, sales taxes, and grants from state and federal governments (which are not based on formulas directly tied to population levels). However, police forces similarly have at least a weak incentive to perform well based on population levels. When people leave a given jurisdiction because of low police quality, the demand for, and price of, housing decreases, ultimately leading to an indirect reduction in property-tax revenues and police funding. While policing revenues and expenditures are not directly linked to a funding formula, it is still feasible to enact a publicly funded voucher system alongside our current system of policing.

A publicly funded police-choice voucher could be based on the average amount of public funding per citizen (or household) living in the jurisdiction.



For example, the city of Dallas estimates that total police funding for fiscal year 2016-17 was around \$504 million.<sup>10</sup> The population in Dallas was estimated to be about 1.318 million in 2016.<sup>11</sup> This means that each citizen in the city of Dallas used around \$382—about \$1,528 for a family of four—in police expenses in 2016. Similarly, it is estimated that New York City’s 2016 policing expenditures were \$5.5 billion<sup>12</sup> for its population of 8.538 million.<sup>13</sup> In other words, New York City spent about \$644 on each citizen—about \$2,576 for a family of four—on policing in 2016. While every citizen in New York City ought to be allocated their total public-funding amount, a politically feasible solution (often used for school-choice vouchers) could be to allocate a fraction of the per-citizen funding amount to each citizen that opts out of their residentially assigned government police force. After all, the government-run police departments, a highly concentrated interest group, would likely lobby through the democratic process to continue to hold their monopoly on force. They would likely make the claim that since a large portion (let us assume 25 percent) of their costs are fixed, a 100 percent reduction in public funding per citizen leaving their protection would cause the department to close its doors, leaving several innocent families without means of protection. In that case, a family of four in New York City could receive 75 percent of the average public-police funding annual amount (or about \$1,932 in 2016) to prevent short-run financial disasters in government-run police agencies. Alternatively, such a bill could simply limit the level of voucher-recipient growth from year to year.

A police voucher does not need to be publicly funded through the local police budget. The voucher could be privately funded (like tax-credit scholarships for education) through voluntary donations from individuals and corporations. People could send donations to government-authorized private-police voucher-granting organizations. Clearly, the tax credits would reduce overall tax revenue; however, the private donations would offset these losses by increasing the total amount of police funding available while

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<sup>10</sup> City of Dallas. “Financial Transparency.” Retrieved from: <http://dallascityhall.com/departments/budget/financialtransparency/Pages/default.aspx>.

<sup>11</sup> United States Census Bureau. QuickFacts. “Dallas, Texas.” Retrieved from: <https://www.census.gov/quickfacts/fact/table/dallascitytexas/PST045216>.

<sup>12</sup> “Report on the Fiscal 2017 Preliminary Budget and the Fiscal 2016 Preliminary Mayor’s Management Report.” New York Police Department. Retrieved from: <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2016/05/056-NYPD.pdf>.

<sup>13</sup> United States Census Bureau. QuickFacts. “New York City, New York.” Retrieved from: <https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045217>.

decreasing the variable costs allocated toward government-provided rights protection (see, e.g., Trivitt and DeAngelis 2017).

### *3.2 Savings Accounts*

Much like an education savings account (ESA) or a health savings account, communities could implement a privately or publicly funded rights-enforcement savings-account program (RESA). Each individual citizen could receive an annual amount equal to a fraction of the per-citizen police funding level and use those funds to purchase private police services. These funds would likely mostly be allocated toward a private police department; however, we could imagine plenty of other privately produced goods and services that are used to ensure that rights are protected such as home security systems, safes for valuables, firearms, car alarm systems, private security guards, property-tracking GPS devices, self-defense courses, guard dogs, neighborhood-watch teams, and online identity-theft protection.

The RESA model has two important advantages over vouchers. First, RESAs allow citizens to customize their rights-protection service packages beyond police departments. Second, RESAs introduce stronger price signals into the market for rights protection. Because policing vouchers could only be used on one type of service, the voucher scenario essentially creates a price floor equal to the per-citizen police funding level determined by the state. In a New York City voucher scenario, we would expect the least expensive policing plan to be at the voucher amount of about \$483 (75 percent of \$644) per citizen in 2016. This price floor would not exist in a New York City RESA scenario, as individual citizens would have a strong incentive to economize on their spending on the private police department. If people paid less than \$483 to have their rights protected, they would be rewarded by getting to save those funds for other types of rights-protection services.<sup>14</sup> To create additional incentives to economize, RESA plans could also include the ability of customers to roll over a portion of unused funds, as ESA legislation currently allows (EdChoice 2017b), from year to year.

### *3.3 Chartered Police Agencies*

Although profit-seeking firms have a strong financial incentive to reduce use of violence and coercion, government actors may not yet feel

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<sup>14</sup> DeAngelis, C. A. (2017). "This Kind of School Choice is Superior to Vouchers." *Foundation for Economic Education*. Retrieved from: <https://fee.org/articles/this-kind-of-school-choice-is-superior-to-vouchers>.

comfortable allowing private companies to use coercion at all. A more politically feasible option is public-police choice, much like public school choice (i.e., public charter schools). State or local governments could approve certain private entities to manage publicly funded police departments. These police departments would be free in the sense that customers would pay zero at the point of entry; however, they would need to be indirectly funded through the current public-police budget—likely from state and federal government grants and local sales and property taxes.

While the inability of these public police forces to charge an explicit fee would likely be politically advantageous, a few economic problems would arise. First, an explicit price of zero would guarantee there would not be any information or incentives gained from price differentiation. Great public police forces would not be financially rewarded for their excellent services; instead, they would be rewarded with a waitlist of customers. Obviously, since variation in police-department quality is bound to emerge, quantity demanded is likely to exceed quantity supplied for certain public police departments. To ensure fairness, government would likely resort to a random lottery whenever such a phenomenon occurs (as currently happens with public charter schools). Great police departments would recognize that their talents were not being financially rewarded and might lose motivation over time. In addition, the high-quality police departments with excess demand would learn that they could simply replace an unhappy customer with one of the many happy customers desperately waiting in the queue. In other words, persistent shortage conditions would likely lead to quality deterioration (Rockoff 1992).

#### **4. Common Criticisms**

Whenever the concept of police choice is raised, economists and everyday citizens respond with criticisms that can be summed up in six categories: (1) conflicts between customers of different agencies, (2) situations in which one agency prevents the rights of another company's customer from being violated, (3) rights protection as a public good, (4) rights protection having positive externalities, (5) certain types of violations' having costs that are spread out across several members of society, and (6) rights protection being too important to leave to private profit-seeking firms.

While some of these criticisms are stronger than others, none of them are legitimate reasons why anyone should expect the current system of government-run policing to outperform any of the systems of police choice I previously explained.

#### *4.1 Conflicts between Customers of Different Agencies*

The first response to the idea of private police choice is almost always related to a possible dispute between customers of different private police agencies. Imagine a situation in which someone protected by a competing agency steals your automobile out of your garage. Once you notice the incident, you tell your private police force. Your private police force (Firm A) looks at the video footage it installed in your garage to deter theft and identifies the violator as John Smith. Your private police force calls up John Smith and tells him it is quite certain he stole its customer's automobile and that he must return it and compensate the police force \$50 for its time and effort, or else it will show up at his front door in a day or two to retrieve the automobile by force. John Smith points out he too has his own reputable private police force (Firm B) and that if Firm A shows up at his front door tomorrow, he will have Firm B show up to defend him. Of course, this kind of situation sounds like it is going to lead to a small war on John Smith's front lawn. Clearly, this would not be an improvement on the current government-run monopoly system (Friedman 1989).

However, as David Friedman (1989) argued, this situation would not likely occur. Since the two private police forces would be profit-seeking firms, they would avoid war because it is very costly. The firms would need to pay for any ammunition used, maintenance for weapons, and any damages accruing to their customers' property because of the skirmish. Perhaps more importantly, the firms would need to pay their employees a lavish salary for the elevated risk of death on the job. And, of course, their bottom lines would be negatively affected since their customers would not like firms that continuously waged war on their front lawns, damaged their property, and put their families in danger. A private firm that waged war would also have to charge a high price to its customers to cover unnecessary battle expenses, which would lead to lost customers and pressures to shut down. In addition, it would not be profitable for a private firm to engage in warfare, because other, peaceful private firms would have an incentive to avoid collaborating with aggressive firms. This is because (1) interactions with aggressive firms would be risky, and (2) peaceful firms would not want the bad reputation of dealing with aggressive firms. In contrast, government actors can wage expensive wars while remaining in business since it is nearly impossible for their customers (citizens) to opt out of paying for them (Tannehill and Tannehill 2007).

One way to avoid this problem altogether is for each firm to agree on fair private arbitrators that would settle these types of disputes (Friedman 1989). Firm A and Firm B could either agree on a settlement out of court or simply take the disagreement to arbitration. I would argue that the former

would be much more likely because the time and effort put into taking the case to arbitration is highly costly (if a firm believed it would lose the arbitration case, it would be more profitable for it to accept the loss before pursuing the case further). If each firm believed it had a good chance of winning the case, the arbitrator would look at the evidence from each firm and determine the victor. With enough evidence to prove John Smith guilty, Firm B would have to pay Firm A for its time and effort used to fight the case, John Smith would have to return the automobile, and his firm would need to provide compensation to the owner. If Firm B did not listen to the verdict of the agreed-upon arbitrator, Firm A (and other firms that learn of Firm B's bad reputation) would likely discontinue doing business with it in the future, leading to either a war, a shutdown, or both. Since Firm B would have much stronger incentives to comply with the determined result of the case—even if it did not agree with the verdict—the loss in arbitration would likely simply mean Firm B would charge risky customers such as John Smith higher rates in the future (similar to what currently happens in the market for car insurance). If John Smith did not like the higher rates, he could switch to a different private police force or even return to the government-run police force. This would give rights violators an obvious financial incentive to obey the law.

This leads to another problem that could occur in the long run. Private police forces might be able to raise prices on their most costly customers and perhaps even proactively turn down customers they perceive to be risky. The result might be that the government-run police forces would get stuck with the costliest customers, whom the private police forces would not want. However, it is not hard to imagine police forces emerging that specialize in serving these types of customers. For example, several private schools exist that largely serve disadvantaged communities of color<sup>15</sup> and others exist that only serve children that are deaf<sup>16</sup> or blind. There are also private companies that help the absolutely least advantaged members of society—the homeless—get off the public streets and become productive citizens with drug-rehabilitation and vocational services.<sup>17</sup> In addition, while this criticism has been made about private school-choice programs in the United States, twenty of twenty-one studies have found that the disadvantaged students that

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<sup>15</sup> *US News and World Report*. “Historically Black Colleges and Universities.” Retrieved from: <https://www.usnews.com/best-colleges/rankings/hbcu>.

<sup>16</sup> Niche. “Horace Mann School.” Retrieved from: <https://www.niche.com/k12/horace-mann-school-bronx-ny>.

<sup>17</sup> Volunteers of America. “Assisting Homeless People.” Retrieved from: <https://www.voa.org/homeless-people>.

are left behind in traditional public schools actually do better academically because of the stronger competitive pressures for government-run schools to improve (Egalite 2013).

Nonetheless, a more politically feasible solution may be to include a provision in the private police-choice bill mandating that the public and private police forces must accept all customers and use a random lottery when a shortage arises. However, there are risks that come along with attempting to control a service industry in this way. After all, the highly regulated school-choice program in Louisiana that compelled participating private schools to surrender their admissions standards to the state experienced lower school-quality levels (DeAngelis and Hoarty 2018; Sude, DeAngelis, and Wolf 2018) and less specialization (DeAngelis 2018; DeAngelis and Burke 2017; DeAngelis and Burke forthcoming).

Further, in the US there are already jurisdictions that overlap (Friedman 1989). Federal, state, county, city, municipal, school, and park police already exist in almost any geographic location at any given time, and they do not go to war with one another when conflict arises. This may be because they are all government-run; however, they are currently commanded by different government agencies and different public officials. Nonetheless, another politically feasible option could be to use a system of choice among government-run alternatives. However, as I argued in the section on chartered police agencies, because of shortages and the lack of incentives and information otherwise provided by price signals the public police-choice arrangement would not be economically efficient.

It is also worth noting the conjecture that a system of private policing would mirror a system of organized crime. Friedman (1989) made a strong argument against this theory. Today, gangs acquire much of their power from their ability to bribe government police officers. Because government police departments are not profit-seeking firms that face shutdown conditions when expenses exceed revenues, and because they are unlikely to lose customers when crime rates increase (on the contrary, the citizens might vote to increase spending on government policing if crime rates increase), government police officers do not have strong financial incentives to turn down bribes. In addition, gangs have a financial incentive to engage in bribery because they can bribe police officers an amount below what they expect to collect through coercive activity such as robbery. Employees of private police agencies are less likely to accept bribes and turn a blind eye because they are in the business of protecting their customers' rights. As Friedman (1989) argued, "The only bribe it would pay the [private] agency to take would be one for more than the value of the goods stolen—a poor deal for the thief...

This reduces to the thief bribing the victim by more than the amount stolen, which is improbable.”

#### *4.2 Preventing Noncustomers' Rights from Being Violated*

Another possible problem regarding customer overlap exists: if there is uncertainty about whether a potential victim is its customer, a given agency might spend less of its time and effort preventing rights violations. After all, it is more efficient and beneficial to prevent a person's rights from being violated in the first place than to seek out a violator after the fact.

There are three reasons why this criticism is probably invalid. First, police officers today allocate most of their resources toward responding to complaints and seeking out violators after they have already broken the law (Stevens 1999). Indeed, the Police Foundation conducted the Kansas City Preventative Patrol Experiment from 1972 to 1973 by randomly assigning levels of police patrol to geographic areas. It eliminated routine preventative patrol in five areas, meaning the police only entered these areas when they were called. The level of preventative patrol was increased by two or three times in five other areas, with five areas used as a control group with normal patrol levels. The Police Foundation found evidence to suggest that changing the levels of preventative patrol affected the incidence of crimes, meaning violators were not deterred by the police or that police currently spend most of their time responding to calls instead of preventing violations (Kelling et al. 1974). In fact, ride-along observers found that Kansas City patrol officers “spent a considerable amount of time waiting to respond to calls for service.”<sup>18</sup> Furthermore, researchers have found that less than 5 percent of 911 calls lead to the prevention of a rights violations or even to an arrest (Witkin, Guttman, and Lenzy 1996).

Second, the current system's problems may be much deeper. After all, we need to compare the proposed system to the current system, which is far from perfect. Statute dictates that the government does not have a duty to protect its citizens or even to respond to its calls. For example, in 1975, two men broke into a house in the nation's capital and robbed, raped, and beat three women over a fourteen-hour period. One of the women was able to call the police twice, but the police did not stop the violators. When the women attempted to sue the city for negligence, the court determined that

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<sup>18</sup> “The Kansas City Preventative Patrol Experiment.” Police Foundation. Retrieved from: <https://www.policefoundation.org/projects/the-kansas-city-preventive-patrol-experiment>.

the government did not have a duty to protect the women (Stevens 1999; DC 1981). Similarly, a California appellate court (1997) indicated that “police officers have no affirmative statutory duty to do anything.”

Third, private rights-protection firms could agree on what they would do if such a situation arose. If one firm proactively protected the rights of another firm’s customer, the customer’s firm could give the proactive firm a side payment. This already occurs in other industries. For example, imagine a customer belongs to a private bank (Bank A) and would like to use its services (specifically, withdrawal from an automated teller machine), but their nearest member bank is a hundred miles away. If the individual withdraws cash from another bank’s (Bank B) automated teller machine, the individual pays a small service fee to Bank A. Bank A then pays Bank B for providing this service to its customers. With such agreements, it would similarly be profitable for each rights-protection firm to proactively assist customers from other agencies. Even if such an agreement did not exist, companies could assist noncustomers out of good will. Currently, police officers may help you when you are on vacation even if you do not pay them anything in taxes. The only difference from the private system is that the police officers from profit-seeking companies would have an additional incentive to help noncustomers. The proactive firm could attract noncustomers to its company by offering them superior service.

In addition, coordination among private policing agencies would be profitable if the sharing of information reduced the risk that individuals would be harmed by rights violators. Because information sharing improves security for customers, security firms have strong financial incentives to share intelligence with competitors. In theory, a system of police choice could lead to the establishment of private information-coordinating agencies that would operate along similar lines as Interpol.<sup>19</sup> Private police agencies would also have an incentive to share valuable information with competing firms because of the discipline of constant dealings (Friedman 1989). Firm A would give Firm B information to help Firm B protect its customers in the expectation that Firm B would share its information with Firm A in the future. Firm B would know that if it did not share its information with Firm A in the future, then (1) Firm A would no longer assist it and (2) Firm A could damage Firm B’s reputation by showing other competitors that Firm B is not trustworthy. Because of the discipline of constant dealings, Firm B has a long-run financial incentive to help Firm A with information in the future.

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<sup>19</sup> Interpol. “Connecting Police for a Safer World.” Retrieved from: <https://www.interpol.int/en>.



### *4.3 Public Goods*

Some critics make the claim that rights protection is a public good, and, since it is a public good, government force must be used to require everyone to pay their fair share. This argument is probably the weakest of the objections considered here, as rights protection obviously fails both of the standard economic conditions of a public good: (1) excludability, and (2) nonrivalrousness in consumption (Samuelson 1954). First, since it is possible for a rights-protection agency to exclude nonpayers from its protection, a free-rider problem does not arise. Since the free-rider problem does not arise, government force is not necessary to fund the service. That we historically had (e.g., England's thief takers in the eighteenth century; San Francisco's private police in the mid-nineteenth century), and currently have (e.g., private police in Detroit, San Francisco, and South Carolina; private mall security; private university police; private railroad police), private policing is concrete evidence that policing can be privately produced and provided.

Even if a free-rider problem did exist with policing, government force would not be the only way to fund the service. After all, even true public goods such as the radio are successfully funded through voluntary mechanisms such as advertisements. In addition, the free-rider problem has been eliminated through technological innovation in the radio industry. For example, satellite-radio companies, such as SiriusXM, have been able to solve the public-good problem by successfully excluding nonpayers from using their services. As Milton Friedman (1962) contended, private monopolies are preferable to government monopolies since (1) individuals can opt out of paying for a private service, and (2) private firms have a stronger incentive to solve the free-rider problem associated with true public goods such as the radio. Johnson and Libecap (1982) also argued that private entrepreneurs have stronger incentives to solve the public-good problem. Furthermore, policing fails the second, but perhaps less important, public-good condition since it is rivalrous in consumption. When one customer requires the assistance of a police officer, the rest of the customers served by the firm have fewer police officers at their disposal.

### *4.4 Positive Externalities*

When people make the claim that rights protection is a public good, I believe they mean to say that rights protection is good for the public. In other words, what they mean to say is that rights protection produces large positive externalities, or uncompensated benefits to third parties. If I voluntarily purchase rights protection from the firm of my choice, I benefit from the transaction by having my rights protected, and the private firm benefits since

it receives my money and earns a profit. However, other members of society that did not directly pay for the service benefit as well. If I feel safer because I know I have a great private police force, I will be more likely to trade with other individuals in the marketplace and more likely to produce valuable goods and services. Most economists agree that this type of market failure would produce a less than socially optimal level of rights-protection services, all else equal (Coase 1937; Pigou 1920).

However, the presence of positive externalities does not mean government must operate the rights-protection agencies; instead, it merely means that government might have an incentive to provide some additional funding of rights protection to push consumption up toward the socially optimal level. Milton Friedman (1955) made the same claim: government may have a reason to fund, but not operate, schools. Nonetheless, since none of us know what the truly socially optimal level of rights protection is, we do not know how much the government ought to subsidize rights protection. Indeed, in attempting to reach the socially optimal level of rights protection, we might miss the socially optimal level and end up further away from the optimal level than if we had taken no action at all (Friedman 1986; 2013). Either way, each of my proposed policy solutions that are publicly funded provides rights protection for every single citizen living in the geographic area. Furthermore, I argue that the level of rights protection would be higher (even with the same amount of tax dollars allocated) because of the incentive to economize (rather than the alternative incentive for bureaucrats to maximize budgets [Niskanen 1971]) in a choice setting. After all, Donahue (1989) found that public service providers are about 50 percent less efficient than private contractors because of less robust labor flexibility, incentives, and accountability, and a weaker focus on results (Pastor 2003).

#### *4.5 Violations with Diffuse Costs*

Certain rights violations disperse relatively small costs across many individuals within a society. If this is the case, individual consumers of private rights protection might consume a less than socially optimal level of these types of rights-protection services. For example, we might expect that speeding laws would not be enforced as much as we would like. When I hire a rights-protection agency, I will not be willing to pay as much for its police officers to reduce average driving speeds on the roads because the benefit of deterring one driver from going one hundred miles per hour is spread across all the other drivers, many whom may belong to alternative rights-protection agencies, on the road at the time. In other words, it may very well be that these types of laws would be enforced less than they are today.

However, no one knows the socially optimal level of speeding tickets. It could be that a reduction in the number of speeding tickets would bring us closer to the social optimum. After all, a recent audit found that police in Washington, DC, give out speeding tickets to citizens for “violations they don’t commit and for vehicles they’ve never owned” and raise \$179 million a year from traffic citations.<sup>20</sup> In addition, we could imagine certain ways that a given private rights-protection agency could compensate another agency’s customers when its own customers drive too fast or recklessly. Rights-protection agencies could install cameras on the dashboards of their customers’ automobiles, and their customers could make complaints whenever other drivers speed. If the two drivers were from different agencies, the case would go to arbitration, and if the evidence was strong enough, the reckless driver’s agency would have to pay for the other agency’s time and effort (Friedman 1989).

In addition, customers that drive recklessly have a larger risk of getting into an accident in which they are at fault. Since risky customers’ agencies would have to compensate the victims’ agencies for their losses, risky customers would have their protection rates go up and reputations go down. The clear incentive would be to drive as safely as possible so you would not have to bear all the costs of the damages you cause. In addition, if a class action lawsuit was filed against a certain reckless driver, the incentive to drive as safely (and politely) as possible would be strengthened even further.

#### *4.6 Importance*

Many people believe that certain aspects of life are too important to be left to faith in the self-interested decisions made by individual actors in the free market (Hebdon 1995; Linowes 1988; Shenk 1995; Wessel 1995). They believe that essential services such as policing need to be instead carefully controlled by supposedly benevolent actors within the government. However, this argument is invalid for three main reasons.

First, government actors are also rationally self-interested individuals; however, while self-interested individuals within the free market system demand goods and services that have the highest quality levels at the lowest

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<sup>20</sup> “DC Is the Wild West When Enforcing Tickets for Traffic Violators, Audit Finds.” *Washington Post*. September 8, 2014. Retrieved from: [https://www.washingtonpost.com/local/trafficandcommuting/withering-inspector-general-report-criticizes-dc-parking-and-traffic-ticketing/2014/09/08/da6ae324-3781-11e4-8601-97ba88884ffd\\_story.html?noredirect=on&utm\\_term=.e286cefeab1d](https://www.washingtonpost.com/local/trafficandcommuting/withering-inspector-general-report-criticizes-dc-parking-and-traffic-ticketing/2014/09/08/da6ae324-3781-11e4-8601-97ba88884ffd_story.html?noredirect=on&utm_term=.e286cefeab1d).

costs, individuals in the political system pursue their self-interest by catering to the needs of concentrated interest groups rather than each individual citizen. In addition, self-interested political actors use as many resources for their constituents as possible so they can politically profit (Niskanen 1971).

Second, many of the same people calling for a government monopoly on the highly important service of rights protection acknowledge that government should not have a monopoly on the most essential product that exists: food. The natural experiment has been implemented at least three times. The USSR controlled the production of food in the 1930s, leading to food shortages, starvation, and about seven million deaths (Graziosi 2017; Werth 2016). The Great Chinese Famine, from 1959 to 1961, killed between fifteen and thirty million citizens from starvation (Holmes 2009), and many scholars contend that Mao Zedong's policies that controlled the food industry were strong contributors to the problem (Dikötter 2010; Li and Yang 2005). More recently, in 2016, the Venezuelan government took control of the supply of food, and again, food shortages arose and have persisted (Dube, Vyas, and Kurmanaev 2018; Oré 2016).

Third, most people agree that the government is ineffective and inefficient at performing relatively simple tasks such as mail delivery and renewing drivers' licenses. Oddly, many of the same people also claim government somehow does a better job than the free market with the much more complex task of protecting rights. Instead, we should expect that governments that do a poor job with simple tasks would do an even less effective job at completing more intricate tasks (Free to Choose Network 2015). Of course, it is not that people holding government jobs are incompetent, lazy, or malevolent. On the contrary, the problem is that the set of incentives included within the political system make it as difficult as possible for government employees to produce high-quality products at low costs (Niskanen 1971). Furthermore, the absence of the invaluable information and incentives provided by price signals within government systems should only exacerbate the problem of ineffectiveness as tasks become more complex (Hayek 1945).

## 5. Conclusion

While the system of rights protection is highly costly and largely inefficient in the United States, it does not have to be. As with any other service industry, a monopoly on production leads to significant difficulties for customers. The big problem is that low quality in this service industry does not simply lead to inconveniences; monopoly power in rights protection means customers are more likely to be stolen from, harmed, or even killed.

What is worse in this specific scenario is that many of the deaths occur at the hands of the providers of the service.

Rights protection can be strengthened through each of the public or private police-choice options I have mentioned: charters, vouchers, and savings accounts. In theory, these policies should lead to substantial quality improvements and reductions in costs, especially because policing fails the economic definition of a public good. Furthermore, other common criticisms of the proposed policies have been addressed in this study; and while the proposed policies are not panaceas, I expect them to lead to substantial improvements over the status quo. In practice, private rights protection, even without any government funding, has been shown to be highly successful in environments as different as present-day Detroit and seventeenth- to eighteenth-century England. We should expect a publicly funded and privately produced system of police choice to perform even better.

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